



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक Cr App. 181 सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Criminal Appeal No.181/2004</u>	
	<u>APPELLANT</u>	Panjabi @ Ramsai Pando S/o Mansai, aged 32 years, R/o gram Keshavpur, Thana Shrinagar (Ramanujnagar) District-Sarguja(CG)
		<u>Versus</u>
	<u>RESPONDENT</u>	State of Chhattisgarh through Police Station Ramanujnagar, District-Sarguja (CG)
	D.B.: <u>HON'BLE SHRI L.C. BHADOO, J. & HON'BLE SHRI SUNIL KUMAR SINHA, J.</u>	
	<u>ORAL JUDGMENT</u> (22.08.2007)	
	<u>L.C. Bhadoo, J:-</u>	
	Smt. Savita Tiwari, counsel for the appellant. Shri Akhil Mishra, Panel Lawyer for the State. Heard.	
	Learned counsel for the accused/appellant submitted that the appellant is in detention since last 5 years and this matter is of single injury, therefore, it may be heard finally.	

GRPRJ — FS.

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	Shri Akhil Mishra, Panel Lawyer appearing on behalf of the State has no objection. This appeal is directed against the judgment of conviction and order of sentence dated 31.1.2004, passed by the First Additional Sessions Judge, Surajpur, Sarguja (C.G.) in Sessions Trial No.446/2002, whereby the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of offence punishable under Section 302 of I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 3 months. The case of the prosecution in brief is that the accused/appellant is son-in-law of the deceased-Gulal Pando. Wife of the accused/appellant namely -Pawaro Bai was at the house of her father-Gulal Pando and she was pregnant. On the fateful day, accused/appellant came to the house of the deceased (father-in-law) to take Pawaro Bai to his house. In this regard there was some quarrel between the two, on which, accused/appellant picked up the axe, lying on the spot and attacked Gulal Pando on his head once, as a result of which, he succumbed to the injury. Mazi Pando(PW-1) gave mereg intimation Ex.P/1 in Police Station-Ramnijnagar, based on that, first information report Ex.P/2 was registered. The S.H.O. left for the scene of occurrence and after giving notice to the Panchas (Ex.	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	P/3), prepared inquest (Ex.P/4) on the body of Gulal Pando. The samples of blood stained soil and plain soil were taken into possession from the place of occurrence under Ex.P/5, while the weapon of offence i.e. axe, was seized under Ex.P/6. The clothes of the accused were also seized under Ex. P/7. Body of Gulal Pando was sent for postmortem examination to Government Hospital, Ramanujnagar under Ex.P/11, where Dr. H.P.Singh (PW-10) conducted postmortem and opined that the cause of death was shock syncope on account of rupture of cranial cavity, brain matter was coming out and the death was homicidal in nature. He prepared postmortem report under Ex.P/10. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur, who in turn, committed the case to Sessions Judge, Sarguja, from where the learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused examined as many as 11 witnesses. The statement of accused was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	The learned Additional Sessions Judge after hearing the counsel for respective parties convicted and sentenced the accused as aforementioned. We have heard learned counsel for the parties and perused the record. Learned counsel for the accused/appellant has not disputed the homicidal death of Gulal Pando. Moreover, PW-2-Nan Bai had stated that accused/appellant attacked the deceased with the axe on his head in her presence, as a result of which, he sustained the injury and died spontaneously. The above evidence of Nan Bai (eye witness) is corroborated by the medical evidence of Dr. H.P.Singh(PW-10), who had stated that on 15.8.2002, at about 12.30 p.m., he conducted postmortem on the body of Gulal Pando and saw that there was a large wound on the head of the deceased, which was caused by some sharp edged weapon, brain matter was damaged, it was coming out of the injury and the death was homicidal in nature. Therefore, in view of the ocular as well as medical evidence, it is established that the death of Gulal Pando was homicidal in nature. As far as involvement of the accused/appellant in crime in question is concerned, PW-2- Nan Bai, who is an eye-witness, had stated that her house is adjoining to the house of Gulal Pando. Last year, daughter of Gulal Pando namely-Pawaro Bai came to	

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आदेश का दिनांक
तथा आदेश क्रमांक

हस्ताक्षर सहित आदेश

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कार्यालयीन मामलों में डिप्टी रजिस्ट्रार
के अंतिम आदेश

her father's house. She was married to accused/appellant - Panjabi Pando, he came to take his wife to his house. She saw that accused/appellant attacked the deceased with axe on his head. In cross-examination of this witness, defence has not been able to elicit any circumstance, which discredits the evidence of this witness. Moreover, the weapon of offence i.e. axe was recovered and the Doctor had stated that there was one injury on the head of Gulal Pando, brain matter was coming out of the injury, therefore, the evidence of Nan Bai(PW-2) is corroborated by the medical evidence. Mazi Pando(PW-1) has also stated that on the fateful day, Nan Bai, his sister came to his house and informed that Pawaro Bai came to his father's house and accused/appellant - Panjabi Pando has come to take his wife, in that regard, there was a quarrel between Gulal Pando and Panjabi Pando, on which, Panjabi Pando attacked Gulal Pando with an axe on his head, therefore, the evidence of Mazi Pando is also corroborated by the medical evidence.

The judgment of the trial Court is based on the clinching medical evidence regarding involvement of the accused/appellant in crime in question.

Learned counsel for the accused/appellant submitted that from the facts of the case, it appears that the quarrel started in between father-in-law and son-in-law on a petty matter, as the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	deceased was not sending his daughter with the accused/appellant, who is husband of Pawaro Bai. In that process, the accused/appellant, all of a sudden picked up axe, lying on the spot and attacked the deceased only once on his head, as a result of which, Gulal Pando died spontaneously. She further argued that in cross-examination of PW-2 - Nan Bai, she had stated that on the fateful day, Gulal Pando(father-in-law) and the Panjabi Pando(son-in-law), both had come to her house. She stated that both were in the habit of consuming liquor on that day also they had consumed liquor. Some quarrel started in connection with sending Pawaro Bai with the accused/appellant and the accused, all of a sudden picked up axe, lying on the spot and attacked the deceased, his father-in-law, therefore, it cannot be said that the accused/appellant attacked the deceased with an intention to cause his death, therefore, the offence against the accused/appellant does not extend beyond Section 304 part II of IPC. On the other hand, learned counsel for the State supported the judgment of the trial Court. Having heard learned counsel for the parties, in order to appreciate the arguments, advanced by learned counsel for the accused/appellant, we have perused the evidence of PW-2, an eye-witness, who had categorically stated that the accused/appellant	

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	is husband of Pawaro Bai, daughter of the deceased and the accused/appellant came to take Pawaro Bai to his house, who was at her father's house. As far as the version lodged in the F.I.R. by PW-1 Mazi Pando that the deceased was not sending Pawaro Bai with her husband-accused/appellant, therefore, a quarrel ensued in between the two and in that process, the accused/appellant picked up an axe and attacked Gulal Pando once on his head, as a result of which, he sustained fatal injury and died spontaneously. The above version of the witnesses is also corroborated by the medical evidence. As there was only one injury on the head, the fact remains that the accused went to bring his wife without any arm and at a spur of moment, an altercation took place between father-in-law and the son-in-law regarding sending Pawaro Bai with her husband-accused/appellant, in that process, accused/appellant picked up axe, which was lying on the spot and all of a sudden, without any pre-meditation or preparation, in a heat of passion, attacked the deceased once, which proved fatal, therefore, case of the accused/appellant is covered under exception^{4 IV A} to Section 300 of I.P.C. and offence under Section 302 of I.P.C. is not made out against the accused/appellant, instead thereof, the above facts suggest that the offence under Section 304 part II of I.P.C. is made out.	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	In the result, the appeal partly succeeds. The conviction and sentence imposed upon the accused/appellant under Section 302 of I.P.C. are set aside. Instead thereof, he is convicted under Section 304 part II of I.P.C. and sentenced to undergo R.I. for 7 years. It is stated that the accused/appellant is in detention since 16.8.2002 till today. The accused/appellant shall be entitled for the set off for the above detention period against the sentence imposed upon the accused.	
	Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge

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